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THE COURT: Yes. I spent a fair amount of time yesterday or the day before yesterday thinking about this case and thinking about the motion for a downward departure on grounds of diminished capacity. As I said to Mr. Barron before, my thinking is the same whether we are discussing the guidelines or some sentence outside the guidelines informed by Mr. Muolo's deficits.

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I don't think there is any disagreement that he made bad judgments in this case, but I am not persuaded that those judgments are the result of the frontal lobe injury. I see those judgments every day. I realize one of the experts says that he, Mr. Muolo, had less capacity than the ordinary defendant to make the right judgment in this case, but while the psychiatrist or psychologist said that -- I'm certain he sees a lot of patients; he doesn't see as many defendants as I do, I doubt he sees as many defendants -- and the judgment exercise here is the same judgments I see every day. That doesn't mean that this judgment by Mr. Muolo wasn't influenced by his mental condition; but when I think about that in specific terms, I don't agree with Mr. Barron that some choices were not made. And it seems to me that those choices had influences beyond Mr. Muolo's deficits. He is a drug addict. He did a lot of work for Mr. Minotti over the years, took a lot

1 of shorts, as he called them, because he got compensated in  
2 other ways. He got compensated by drugs. And at the end of  
3 this transaction here, there may be the notion that there may  
4 be some compensation by means of drugs. There is a motive here  
5 beyond diminished capacity that I am not persuaded was -- I am  
6 not persuaded that motive was not more influential than the  
7 diminished capacity.

8 And I have to find the diminished capacity under  
9 the guidelines substantially contributed to the commission of  
10 the offense and I think I use that standard under 3553 and I  
11 can't find that the diminished capacity substantially  
12 contributed or at least contributed more than these other  
13 motives. And I point to the fact that the judgments exercised  
14 in the last stages of this case, the ones that spring from  
15 self-protection and the idea that Mr. Muolo and his  
16 confederates not be caught has -- those judgments have a kind  
17 of refinement that do not bespeak naivete, they bespeak rather  
18 sophistication about choices to be made when confronted with  
19 options to cooperate or to help one's confederates. So I do  
20 not grant the departure on diminished capacity grounds or any  
21 other ground.

22 Mr. Muolo, please stand.

23 Mr. Muolo, it's the judgment of the Court that you  
24 be committed to the custody of the Bureau of Prisons to be  
25 imprisoned for a term of 57 months. This is a term of 57

1 months on each count to be served concurrently. I will  
2 recommend that you participate in the 500-hour comprehensive  
3 drug treatment program.

4 Upon your release from imprisonment you will be  
5 placed on supervised release for a term of four years. This is  
6 a term of four years on each count, all such terms to run  
7 concurrently.

8 Within 72 hours of your release from the custody of  
9 the Bureau of Prisons you will report in person to the district  
10 in which you are released. While you are on supervised release  
11 you are not to commit another federal, state, or local crime.  
12 You will refrain from any unlawful use of alcohol or controlled  
13 substance. You will submit to one drug test within 15 days of  
14 your release and at least two periodic drug tests thereafter  
15 not to exceed 104 drug tests per year as directed by probation.

16 You will submit to the collection of a DNA sample  
17 as directed by probation. You will comply with the standard  
18 conditions that are set forth in the guidelines and the  
19 following special conditions: You are prohibited from  
20 possessing a firearm or other dangerous weapon. You are to  
21 participate in a program for substance abuse as directed by the  
22 probation officer, and that program may include testing not to  
23 exceed 104 tests a year. And to the extent that you can do so  
24 yourself or through third-party payments, you are required to  
25 assist in the payment of the cost of those services. You are

1 to participate in a mental health treatment program as directed  
2 by the probation office. And, again, to the extent that you  
3 have the capacity to do so, you will contribute to the cost of  
4 those services either yourself or through third-party payment.

5 I will not impose a fine. It is my determination  
6 that you don't have the capacity to pay a fine.

7 I will order that you pay \$100 special assessment  
8 on each of the two counts of conviction for a total of \$200.  
9 That's due immediately, but if you can't pay it immediately,  
10 I will establish a payment plan.

11 There's one other thing that I do want to say by  
12 way of stating reasons for this sentence.

13 I agree with Mr. McNeil that there has been a  
14 substantial adjustment in the sentence before we got here,  
15 particularly with respect to the possible responsibility of  
16 Mr. Muolo for this weapon. And the sentence I have imposed is  
17 a full recognition of the seriousness of this offense.

18 This is, as Mr. McNeil has said, a robbery of a  
19 drug dealer in a hospital parking lot with at least one person  
20 armed and the possibility, at least as far as Mr. Muolo might  
21 have been aware, of another person being armed. It didn't turn  
22 out that way, but Mr. Ruiz might have been armed. And the  
23 willingness to participate in a crime that had that potential  
24 of violence is something that animates my decision to impose  
25 the sentence I have imposed.

1           Let me advise, you Mr. Muolo, that you can appeal  
2     the sentence to the extent that your appeal rights have not  
3     been limited by your plea agreement. They have been limited,  
4     and to the extent that you have rights remaining you may  
5     appeal. Any appeal that you wish to file must begin with the  
6     filing of a notice of appeal.

7           If you wish to appeal and you want to file a notice  
8     of appeal but can't pay the cost of the fee of filing a notice  
9     of appeal, you should notify the clerk of this court to that  
10    effect and the clerk will prepare and file a notice of appeal  
11    on your behalf.

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